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January 14, 2020

The Honorable Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580

Dear Chairman Simons:

I write to urge the Federal Trade Commission (FTC) to investigate unfair, deceptive and anti-competitive practices in the ad blocking software industry.

Hundreds of millions of consumers around the world have downloaded and installed software tools that purport to block online ads. In turn, the largest ad companies — including Google, Amazon, Microsoft and Verizon Media — have quietly paid millions of dollars to some of the largest ad blocking software companies in order to be able to continue to track and target consumers with ads.

In 2011, Adblock Plus, one of the most popular free ad blocking tools, stopped blocking all ads by default and instead started to display ads in return for substantial payments from the largest ad companies. Eyeo, the German company that makes Adblock Plus, operates an “Acceptable Ads” program in which it whitelists advertisers that agree to prohibit pop-ups and other types of annoying ads. Eyeo requires the largest internet advertising companies to pay 30% of their revenue from ad blocking users to be included in this program. In October of 2015, Eyeo announced that it had opened its Acceptable Ads program to competing ad blockers, enabling competitors to use Eyeo’s whitelist and receive payments from the major ad companies. The same day, AdBlock, another popular ad blocker, revealed that it had been sold to an anonymous buyer and would be joining the Acceptable Ads program. AdBlock then automatically “upgraded” millions of AdBlock users, without their affirmative consent, into tracking and targeting by major ad companies that paid to be included in Eyeo’s whitelist.

Tens of millions of consumers downloaded and installed ad blockers that advertised that they would block all ads. By automatically “upgrading” existing users of ad blockers to new versions that enable the major ad companies to track consumers and target them with ads, these companies have likely violated federal law. The FTC has made it clear that when one company buys another and “change[s] the privacy promises already made to consumers, [the buyer will] need to inform consumers and get their express affirmative consent to opt in to your new practices.” Likewise, as the FTC described in its complaint against Sears Holdings in 2009, disclosures in the small print are not sufficient if clear statements promising more have been made to consumers. According to the FTC, companies must disclose “facts [that] would be material to consumers in deciding to install the software.”

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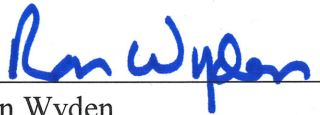
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Accordingly, I urge the FTC to open an investigation into unfair, deceptive and anti-competitive practices in the ad blocking industry. The FTC should also act to ensure that ad blockers are far more transparent with consumers. Ad blockers that whitelist ads in exchange for payments from ad companies should be required to prominently disclose this to existing users whenever they are shown an ad from a paying advertiser and to new or potential users when they are downloading or installing the ad blocker. This will enable consumers to have the information they need to easily evaluate and compare the effectiveness of ad blockers.

Thank you for your attention to this important matter. If you have any questions about this request, please contact Chris Soghoian in my office.

Sincerely,



Ron Wyden
United States Senator

CC: The Honorable Makan Delrahim, Assistant Attorney General, Antitrust Division,
Department of Justice